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IN THE

Supreme Court of the United States

INFINEON TECHNOLOGIES AG, *et al.*,
Petitioners,

v.

RAMBUS, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

AMICUS CURIAE BRIEF OF JEDEC SOLID STATE TECHNOLOGY ASSOCIATION IN SUPPORT OF PETITIONERS

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AMICUS CURIAE BRIEF OF JEDEC SOLID STATE TECHNOLOGY ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This *amicus curiae* brief is submitted by the JEDEC Solid State Technology Association ("JEDEC") in support of the petition for a writ of *certiorari*.[1]

INTEREST OF AMICUS CURIAE

JEDEC is a non-profit trade association which serves as the semiconductor and solid-state engineering standardization body of the Electronic Industries Alliance ("EIA"). EIA is a trade association that represents all areas of the electronics industry.

JEDEC develops technical standards through its 50 committees. About 250 member companies and 1800 individuals actively participate on these committees to develop standards to meet industry and user needs for semiconductor devices and integrated circuits. These member companies include both manufacturers and users of these products, and others allied to the field.

JEDEC strongly favors the development of open standards. To achieve this, JEDEC's patent policy provides for the early disclosure of relevant patents and applications. In no case will JEDEC issue a standard requiring use of known patent claims unless it receives assurances that required patents will be made available on royalty-free or reasonable, non-discriminatory terms.

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[1] No counsel for any party authored this brief in whole or part. Petitioner Infineon Technologies AG ("Infineon") is a dues-paying member of JEDEC. However, neither Infineon nor any other person besides JEDEC made a monetary contribution to the preparation of this brief.

JEDEC has been one of the foremost standards development organizations for the semiconductor industry since 1958. JEDEC is an acronym standing for the Joint Electron Device Engineering Council. JEDEC was a division of EIA until 2000, when it was separately incorporated as a non-profit, non-stock corporation.

JEDEC has a direct interest in this case because it involves the interpretation and application of JEDEC's patent policy. The trial court and jury below determined that respondent Rambus, Inc. ("Rambus") committed fraud when it violated JEDEC's patent policy by failing to disclose patents and patent applications to JEDEC and one of its committees. On appeal, the majority of a Federal Circuit panel formulated its own, erroneous view of JEDEC's patent policy, which will have enormous and far-reaching implications to the users of hundreds of JEDEC standards that have been issued in reliance on JEDEC's patent policy.

JEDEC representatives and participants testified at the trial of this case. JEDEC moved to submit an *amicus curiae* brief in the proceedings before the Federal Circuit, but JEDEC's motion was opposed by Rambus and denied by the court below without explanation. JEDEC later filed an *amicus* brief with the Federal Circuit in connection with a petition for rehearing *en banc*. Petitioners and respondent have consented to JEDEC's submission of this *amicus* brief.

SUMMARY OF ARGUMENT

The Court should review this case because the divided panel of the Federal Circuit reached an erroneous decision about the scope of JEDEC's patent disclosure policy that will have serious repercussions far beyond the immediate parties and claims. Hundreds of JEDEC standards for computer devices have been developed

under JEDEC's patent policy, with literally billions of dollars of resulting trade in standardized products. The majority's ruling, which pronounced a narrow and unrealistic reading of JEDEC's policy, affects the rights and obligations of countless computer-device manufacturers and purchasers. Simply put, the majority's decision renders JEDEC's patent policy ineffective and unworkable. Despite a vigorous dissent, the panel majority substituted a new policy of its own creation in place of the policy set forth in JEDEC's manuals and relied on by the industry.

JEDEC's patent policy requires that participants in its standard-setting work make early disclosure of patents and patent applications that they know of and that may relate to proposed standards. JEDEC members and participants have an obligation to "inform the meeting of any knowledge they may have of any patents, or pending patents, that might be involved in the work they are undertaking." (App. 24a.) The disclosure policy is intended to elicit the broad disclosure of any intellectual property ("IP") that is relevant to the work of a JEDEC committee so that the committee can make intelligent, informed decisions on whether to include the IP in the standard, design around the IP, pursue alternative technological approaches, or consider other options. The patent policy is, therefore, fundamental to JEDEC's work. The patent policy promotes the fair and open development of efficiency-enhancing industry standards.

Contrary to the majority's ruling below, JEDEC's intentionally broad disclosure policy goes far beyond requiring participants to disclose only those patents and applications that may reasonably be expected to be "needed to implement the standard." (App. 32a.) If the disclosure duty were so narrow, participants in JEDEC committee meetings could obtain an unfair competitive

advantage by secretly amending patent applications to exploit the technical innovations that are collaboratively discussed at JEDEC meetings. Likewise, JEDEC participants could secretly seek patents, and later enforce them, that cover technology that might be useful but not absolutely necessary to utilize a standard. The panel majority's reading of the policy would permit firms, with impunity, to lay a secret minefield of patent claims surrounding the specific JEDEC standard as long as no patent turned out to be absolutely necessary to practice that specific standard. The slightest step outside the bounds of the standard would cause patent peril.

The panel majority's decision subverts the JEDEC patent policy, changing it from a broad disclosure rule to a narrow one permitting firms to conceal critical IP information. If not reversed, that ruling will create a huge safe harbor for misleading conduct perpetrated at JEDEC, and thereby frustrate the collaborative, standard-setting process. As the dissenting opinion forcefully explained, substantial evidence supported the jury's conclusion that JEDEC's patent policy was broad in scope, and "it is not this court's job to rewrite or reinterpret the duty." (App. 59a.) For these reasons, this is a case of exceptional importance to JEDEC, the semiconductor industry, and the standards development community.

ARGUMENT

I. JEDEC STANDARD-SETTING ACTIVITY HAS NUMEROUS BENEFITS WHICH MAY BE FRUSTRATED IF PARTICIPANTS VIOLATE JEDEC'S PATENT POLICY

Collaborative standard-setting activity is crucial to the computer industry, which depends on interoperability and compatibility of both hardware and software. Standard setting produces distinct cost advantages for manufacturers and consumers. These benefits, however, can only be achieved if JEDEC members and participants in standards-development work have confidence that other participants will not secretly manipulate the standard-setting group's functions and meetings for their own advantage.

As described below, the early disclosure of actual or potential patent rights is fundamental to JEDEC's work. It permits standard setting to proceed on an informed basis, with the opportunity for JEDEC to decide in a timely manner whether to utilize alternative technological approaches that are not likely to be burdened by existing or future patent rights, or whether to standardize the claimed intellectual property if appropriate assurances are provided from the patent holder. JEDEC seeks to avoid patent "ambushes," in which a patent is disclosed for the first time by a member or other participant only after JEDEC approves a standard and it is put to widespread commercial use. Such conduct can roil billion-dollar markets for the basic, technological building blocks of modern computers, and create immense economic pressure on firms to license newly disclosed patents or else face the cost and uncertainty of litigation.

JEDEC is one of the leading standard-setting groups for the semiconductor industry. JEDEC member companies participate in collaborative work to develop industry-wide technical standards for semiconductor products, including Dynamic Random Access Memory ("DRAM") products and Synchronous Dynamic Access Memory ("SDRAM"). JEDEC technical standards permit DRAM and SDRAM products made by different manufacturers to be interchangeable with each other, and to be interoperable on a standardized basis with other computer-system components.

Standardization often reduces costs too. Semiconductor products suited only for a single company's specifications need to be custom-made, with a limited market. In contrast, the manufacturers of a standardized product are able to sell it on an industry-wide basis, and can benefit from lower per-unit costs of production. Buyers and consumers gain the benefit of competition from multiple suppliers.

The standards development process at JEDEC provides an important opportunity for different companies to cooperate on the technical development of semiconductor products. It is common for final JEDEC standards to be the result of refinements, suggestions, and contributions by several different companies over months and sometimes years. This collaborative process may include general discussions, survey ballots designed to measure support for different technical approaches, final ballots, and other communications. Through this technical collaboration at JEDEC, initial proposals are modified, improved and tailored to best meet industry needs.

All of these advantages are imperiled if participants in the process are permitted to flout JEDEC's patent policy without consequence. Competitors

are far less likely to participate in standard-setting groups like JEDEC, or initiate new standards activities, if they fear a later patent "ambush" by fellow participants, or if they fear that other participants will secretly manipulate the standards-development process. The mutual suspicions created by the risk of such behavior would chill and ultimately disable future collaborative work.

For these reasons, the JEDEC patent disclosure policy is among the most important "rules of the game" in the JEDEC standards development process. Everyone who joins JEDEC or participates in its work is duty bound to familiarize themselves with and abide by the letter and the spirit of the patent disclosure policy. As explained next, the rules are grounded in common sense and are designed to promote openness, good faith, and fair dealing in the development of standards.

II. JEDEC'S PATENT POLICY REQUIRES EARLY AND BROAD DISCLOSURE OF PATENTS AND PATENT APPLICATIONS THAT MIGHT BE INVOLVED IN THE WORK OF JEDEC COMMITTEES

JEDEC's patent policy requires members and participants to disclose to JEDEC committees any known patents or patent applications related to standardization work being undertaken by JEDEC committees. JEDEC's patent disclosure policy differs from that adopted by some other standard-setting groups, as JEDEC has tailored its policy to the needs of the industry and the wishes of its members.[2]

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[2] Many standard-setting organizations have developed patent policies. *See* M. Lemley, *Intellectual Property Rights*
(continued...)

JEDEC's policy seeks to "avoid requirements" in standards that call for use of "a patented item or process." (App. 26a.) Standards that require the use of items subject to a patent or patent application are to be considered by JEDEC with "great care." (App. 24a.) JEDEC's patent policy states that no standard shall refer to an item that is patented or the subject of a patent application unless "all of the technical information covered by the patent is known to the formulating committee or working group." (App. 25a.)

JEDEC requires disclosure of patents and patent applications as early as possible in the standard-setting process. To this end, JEDEC's policy manuals require that committee chairs at each meeting should "call attention to the *obligation* of all participants to inform the meeting of any knowledge they may have of any patents, or pending patents, that *might be involved in the work they are undertaking.*"[3] (App. 24a) (emphasis added.) As discussed further in Part III below, and as the dissenting opinion stated, the obligation to disclose

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(continued...)

and Standard-Setting Organizations, 90 Calif. L. Rev. 1889, 1903-08 (2002)(surveying variations in patent policies among different standard-setting organizations). The American National Standards Institute ("ANSI") is an umbrella group of standard-setting organizations, and has published its own guidelines for patent policies. ANSI, *Guidelines for Implementation of the ANSI Patent Policy*, available at http://web.ansi.org/public/ library/guides/ppguide.html.

[3] Much of JEDEC's standards-development work takes place through committees. In the case of SDRAMs, which are at issue in this case, the JEDEC work proceeded through JEDEC Committee JC-42.3 (MOS Memories).

patents or applications that "might be involved in the work [committees] are undertaking" is "broader than requiring disclosure of only claims reading on the standard." (App. 51a.) The breadth of JEDEC's disclosure obligation is not an oversight; it is deliberate and essential.

When information about patent or patent applications that "might be involved" in standard-setting work is disclosed in a timely manner as required by the patent policy, JEDEC participants are able to make informed choices about the technological approach they wish to follow, and the types of technology to be incorporated into a standard. They may elect to use alternative technology in which the best means of implementing a standard is not saddled with actual or potential patent rights.

As a standard evolves through the work of a committee, it is impossible for any JEDEC participant to know ahead of time, with total certainty, that a particular patent claim will be infringed by the final JEDEC standard. For this reason too, early disclosure is required of any patents or applications that "might be involved" in the standards "work" that the JEDEC committee is "undertaking." (App. 25a, 53a.) If the JEDEC patent disclosure policy only required disclosure of those patent claims that are absolutely essential to practice a final standard, participants would need a crystal ball to determine what and when to disclose. As the dissenting opinion pointed out, that interpretation – which the majority adopted – "does not take into account the possibility that, during the course of its work, the committee considers, debates, rejects and amends various proposals as the standard evolves." (App. 51a.)

The vast majority of participants at JEDEC meetings are engineers, who are not steeped in the

intricacies of patent law. This is another reason why the JEDEC patent policy broadly requires the disclosure of anything that "might be involved" in committee work. In practice, most participants are not qualified to make legal determinations whether a patent claim is "needed to implement the standard." (App. 32a; *see* App. 66a.)

The disclosure of patents and applications by JEDEC participants is vital, because JEDEC, as a practical matter, cannot conduct patent searches of its own for each of the hundreds of potential standards considered each year. Obviously, JEDEC lacks any ability to identify patent applications that are not in the public record.

In some cases, the technology that is the subject of a patent or patent application may be technically superior to alternatives being considered for incorporation into a JEDEC standard. In such cases, if JEDEC is informed of patents or patent applications, it may nonetheless choose to use that technology in a JEDEC standard.[4] However, under its patent policy, JEDEC may take this step only if the committee chairman has received from the patent holder or patent applicant a commitment to either grant royalty-free licenses to those utilizing the standard, or to grant licenses under reasonable terms and conditions that are demonstrably free of any unfair discrimination. (App.

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[4] *E.g.*, J. Mueller, *Patenting Industry Standards*, 34 J. Marshall L. Rev. 897, 931 ("Mandatory disclosure preserves for the standards-setting body the option to decide whether it will adopt a standard that requires the use of patented technology or develop a different standard that avoids it altogether") (Summer 2001).

135a.) If such assurances are not provided, JEDEC cannot use the proprietary technology in its standard.

It takes months, or in some cases years, to develop a JEDEC standard. Significant delays can arise if required patent disclosures are not made until late in the standard development process, and committees are then forced to go back to the drawing board after lengthy work has been done and the committee has reached a technical consensus. Such delays can only frustrate JEDEC's goal of developing standards for cutting-edge technology in a field that has been progressing at a rapid pace.

JEDEC relies on the affected parties (patent holders and alleged infringers) to address disputes about non-compliance with JEDEC's patent disclosure policy. If an amicable resolution is not possible, claimed violations can be addressed through judicial process such as this case. JEDEC does have authority to withdraw an issued JEDEC standard if it determines that the patent policy was violated. However, such a withdrawal may have little practical effect if the industry and its supply chain partners have already implemented the standard, such as through widespread production or technical adoption of the standard.

III. THE PANEL MAJORITY SUBSTITUTED ITS OWN VIEW OF JEDEC'S PATENT POLICY FOR THAT EMBRACED BY JEDEC, ITS REPRESENTATIVES AT TRIAL, AND THE JURY

As noted above, JEDEC's policy manual requires that committee chairs at each meeting should "call attention to the *obligation* of all participants to inform the meeting of any knowledge they may have of any patents, or pending patents, that *might be involved in the*

work they are undertaking." (App. 24a) (emphasis added.)

The majority opinion below discounted the plain language of this manual, and ruled instead that "a reasonable jury could find only that the duty to disclose a patent or application arises when a license under its claims reasonably might be required to practice the standard." (App. 31a.) According to the majority, the petitioners provided "no evidence that the policy required (or that JEDEC members understood the policy to require) disclosure of patents and applications not necessary to practice the standard." (App. 31a.) The majority chastised JEDEC for the "staggering lack of defining details" in the JEDEC patent policy (App. 34a), and asserted that JEDEC "could have drafted a patent policy with a broader disclosure duty" but "simply did not." (App. 35a.)

The dissenting opinion correctly rejected these conclusions. It recited the language of the policy manual, requiring disclosure of patents or applications that "might be involved in the work [committees] are undertaking," and noted that this duty "is much broader than requiring disclosure of only claims reading on that standard." (App. 51a.) The dissent also cited testimony that the "might be involved" language in the JEDEC manual was affirmatively communicated to JEDEC's members, which the majority opinion had overlooked. (App. 27a, 57a-58a.)

The dissent also reviewed other substantial evidence in the record which supports a broad construction of the JEDEC patent disclosure policy. This included:

- (1) testimony from the JEDEC committee chairman that it is a "complete violation" of

JEDEC's policy for a firm to attend JEDEC meetings and, as Rambus allegedly did, "then write claims to cover proposals in the JEDEC standards without disclosing [them]" (App. 52a);[5]

(2) testimony from JEDEC's general counsel (the person responsible for implementing the JEDEC policy) that the policy required "the early disclosure of patents and patent applications that are *or may be* required to comply with the standard" (App. 53a)(emphasis in original);

(3) evidence that Rambus itself understood "that it was required to disclose something more than only those claims reading on the SDRAM standard" (App. 54a);

(4) evidence that, in practice, the JEDEC committee requested information "involving" balloted standards, and the JEDEC committee's patent tracking system called for disclosure of items "of potential patent interest" (App. 52a); and

(5) evidence that participants actually disclosed patent applications on "a particular implementation [that] may not be required to use the standard." (App. 52a.)

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[5] The trial court found that "Rambus drafted more patent claims intentionally designed to cover the technology under consideration at JEDEC, thereby generating more patent applications." (App. 143a.) It found that Infineon "presented evidence too voluminous to catalog about Rambus' pervasive expansion of its patent portfolio in response to discussions held at JEDEC standard-setting meetings." (App. 145a.)

The Federal Circuit was required to affirm the trial court's judgment in light of this substantial evidence, but instead proceeded to reconsider the evidence and resolve the facts on its own. (App. 54a.) This usurpation of the jury's role was improper, with severe consequences for JEDEC and the semiconductor industry.

The dissenting opinion found that JEDEC had every right to eschew a "bright line rule, such as the one the majority has now imposed upon it." (App. 59a.) As the dissent noted, "JEDEC was free to formulate whatever duty it desired and it is not this court's job to rewrite or reinterpret that duty." (App. 59a.) Yet the majority opinion substituted its views in place of JEDEC's patent policy.

JEDEC's policy is not remedial in nature, that is, merely intended to ensure that patented technologies are avoided in the final standard. Rather, it is proactive, so that a JEDEC committee can create a map of the patent minefield to navigate as the standard evolves and new approaches are considered. The panel majority's interpretation of the JEDEC disclosure duty as narrowly limited only to those patents and applications that are "needed to implement" the final standard is simply inconsistent with the proactive nature of the policy.

The majority's opinion, if not reversed, would legitimize unfair and deceptive conduct such as that allegedly practiced by Rambus. In this case, the trial court found that Rambus secretly submitted many claims and amendments to its relevant but undisclosed patents based on "discussions held at JEDEC standard-setting meetings." (App. 145a.) In substance, Rambus turned JEDEC committee members – who thought they were working collaboratively – into unwitting contributors to Rambus' patent portfolio.

The JEDEC patent policy seeks to preclude participants from practices which undermine the willingness of others to participate in collaborative standard setting. The disclosure of patent filings made in response to JEDEC committee discussions would be highly material to the committee's continuing deliberations. They would surely cause other members to exercise greater caution in suggesting technical refinements. The majority opinion gave no consideration to this problem or to the testimony of witnesses that such behavior was forbidden by JEDEC's policy. (App. 52a.)

IV. THE COURT SHOULD REVIEW THIS CASE TO CORRECT AN ERRONEOUS RULING OF FAR-REACHING IMPORTANCE

The Court should review this case because it has ramifications far beyond the immediate parties.

Because JEDEC is a leading standard-setting organization in the electronics industry, the proper application of its patent policy affects hundreds of issued JEDEC standards for semiconductors and other electronic components, and countless manufacturers and users of those components.

If the ruling below is undisturbed, the rights and obligations of these numerous firms respecting the hundreds of JEDEC standards will be altered in ways unforeseen by many. Firms that secretly filed patent claims based on "what they learned at the JEDEC meetings" (App. 46a) will largely be free to enforce those patents, even though those meetings were intended to foster the collaborative development of open standards. Moreover, JEDEC participants will be at the absolute mercy of patent-licensing demands by those firms that secretly laid patent minefields around a proposed standard.

Already, JEDEC is facing reluctance from its members to continue their participation in JEDEC-sponsored standards activity. In the trade press, commentators have stressed that "the semiconductor industry will likely have to reassess its reliance on the protections provided by the JEDEC standardization process."[6]

The correct enforcement of JEDEC's patent disclosure policy (as adopted by JEDEC) is important to guide the lower courts, federal agencies, and the parties in the increasingly frequent judicial and regulatory litigation involving alleged non-disclosures of patent rights. Before the 1990s, there was relatively infrequent litigation over abuse of standard-setting groups' patent disclosure rules.[7] Since the early 1990s, however, such litigation has burgeoned. JEDEC itself is aware of litigation involving alleged violations of its patent

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[6] F. Marino & J. Nye, *A Diminished Duty to Disclose: The Federal Circuit Decision in Rambus Inc. v. Infineon Technologies*, INTELLECTUAL PROPERTY TODAY, at 12 (June 2003).

[7] *E.g.*, *Potter Instrument Co. v. Storage Technology Corp.*, 207 U.S.P.Q. (BNA) 763, 769 (E.D. Va. 1980) (patent holder is estopped from enforcing patent when it "actively participated" in a standard-setting committee and "intentionally failed to bring its ownership of the . . . patent to the committee's intention, notwithstanding the committee's policy to the contrary"), *aff'd*, 641 F.2d 190 (4th Cir.), *cert. denied*, 454 U.S. 832 (1981); *Stambler v. Diebold, Inc.*, 11 U.S.P.Q.2d (BNA) 1709, 1715 (E.D.N.Y.) ("Plaintiff could not remain silent while an entire industry implemented the proposed standard and then when the standards were adopted assert that his patent covered what manufacturers believed to be an open and available standard"), *aff'd*, 878 F.2d 1445 (Fed. Cir. 1988).

disclosure policy on at least six widely used standards.[8] Other cases have involved alleged violations of other standard-setting groups' patent policies, as well as standard setting by government regulators.[9] If

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[8] *E.g., Winbond Electronics Corp. v. International Trade Commission*, 2001 U.S. App. LEXIS 25113 (Fed. Cir.), *corrected*, 275 F.3d 1344 (Fed. Cir. 2001)(Silicon Signature); *Wang Laboratories, Inc. v. Mitsubishi Electronics America, Inc.*, 103 F.3d 1571 (Fed. Cir.), *cert. denied*, 522 U.S. 818 (1997)(Single In-Line Memory Modules); *Sun Microsystems, Inc. v. Kingston Technology Co.*, Civ. Action No. C99-03610VRW (N.D. Cal., filed July 26, 1999)(Dual In-Line Memory Modules); *TM Patents, LLP v. IBM Corp.*, Case No. 7:97-CV-1529 (S.D.N.Y., filed March 6, 1997)(CBR Refresh) *Texas Instruments, Inc. v. Micron Technology, Inc.*, Case No. 93-CV-254 (D. Idaho, filed Sept. 3, 1992)(Quad CAS); *In re Certain Integrated Circuit Chipsets and Products Containing Same*, Inv. No. 337-TA-428 (International Trade Comm'n, filed April 17, 2000)(P6 architecture).

[9] *E.g., In re Dell Computer Corp.*, 121 F.T.C. 616 (May 20, 1996)(Complaint and Consent Decree) (Dell Computer charged by Federal Trade Commission with "unfair methods of competition" under the Federal Trade Commission Act for failing to disclose patent rights on a video bus to the Video Electronics Standards Association, despite the group's "affirmative disclosure requirements"); *Townshend v. Rockwell Int'l Corp.*, 55 U.S.P.Q.2d (BNA) 1011, 1018-21 (N.D. Cal. 2000)(modem standard involving International Telecommunications Union); *SanDisk Corp. v. Lexar Media, Inc.*, No. C98-01115 (N.D. Cal. Oct. 17, 2000)(alleged non-disclosure of flash memory patent). In a related context, concerns about unfair competition arise when a firm offers its technology to a regulatory agency as a standard without disclosing that it is seeking patents covering that technology. *See* FTC Complaint, *In re Union Oil Co. of Calif.*, Docket No. 9305 (Federal Trade Comm'n March 4, 2003), available at http://www.unocal.com/rfgpatent/index.htm; *Sony Electronics,*

(continued...)

undisturbed, the decision below will affect all claims of this nature – both present and future – involving standards developed to date.

The decision below will also have repercussions around the world. JEDEC's members include firms based in Asia, Europe, and other countries, as well as firms based in the United States. Many of these firms do business on a multi-national basis. As a practical matter, many of the standards adopted by JEDEC become worldwide standards.

The problem of patent "ambushes" is particularly acute when it occurs in the context of a standardized product. The Federal Circuit previously addressed a similar controversy in which a patent holder failed to disclose patent applications to JEDEC. *Wang Laboratories, Inc. v. Mitsubishi Electronics America, Inc.*, 103 F.3d 1571 (Fed. Cir.), *cert. denied*, 522 U.S. 818 (1997). As the court noted there, JEDEC's adoption of an item as an industry standard can vastly increase demand for that item, in some cases into "a multi-billion dollar market." 103 F.3d at 1579. The very nature of "standardized" products — which by definition may be used by the whole industry — accentuates the need for effective remedies to redress violations of JEDEC's patent policy.

Finally, cases of this nature implicate important concerns under the antitrust laws, which aim to prevent the improper manipulation of standard-setting processes.

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Inc. v. Consumer Electronics Ass'n, 157 F. Supp.2d 172 (D. Conn. 2001).

As the Court has explained, "private standard-setting by associations comprising firms with horizontal and vertical business relationships is permitted at all under the antitrust laws only on the understanding that it will be conducted in a nonpartisan manner offering procompetitive benefit," and subject to procedures that "prevent the standard-setting process from being biased by members with economic interests." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 501, 506-07 (1988). This principle is violated if one firm is able to enhance the monopoly power of its patents by stealthy and misleading conduct at the standard-setting organization. For this reason too, the Court should give special attention to this case.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

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